Remarks

Claims 42-52, 91-129, 131-143, and 145-152 are pending.

Double Patenting Rejections

The Examiner rejected claims 42, 91, 99, 106, 111, 121, 126, 131, 135, 136, 141, 146, 150, and 152 for non-statutory obviousness-type double patenting over claims 1, 24, 46, 50, and 58 of U.S. Patent No. 6,313,833. We respectfully request that these rejections be held in abeyance until prosecution on the remaining issues is complete.

Rejections under 35 U.S.C. 103

The Examiner rejected claims 42-45, 48-52, 91-94, 98-101, 105-108, 110, 111, 113-123, 126, 127, 129, 131-134, 136, 140-143, 146, 148-150, and 152 as obvious over U.S. Pat. No. 5,819,028 to Manghirmalani ("Manghirmalani") in view of Tuli et al. U.S. Pat. No. 6,256,651 to Tuli et al. ("Tuli").

Manghirmalani describes an "apparatus which provides the user with an indication of the computer network's health." Manghirmalani at Abstract. Manghirmalani describes its system as follows:

> [I]t is the function of the network management system to collect, monitor, control, and display various aspects associated with the computer network. The network management system accomplishes its task by gathering data close to the source; reducing the data to meaningful information; and presenting the resulting data to one or more central management stations which then displays the data to an operator. [Col. 5, lines 27-33.]
>
> . . .
>
> The network management station initiates the data gathering process by sending queries to agents located within each concentrator. An agent is a pre-configured software program that continually collects data as specified by the program. The collected data is stored in a local register. [Col. 5, lines 39-43.]
>
> . . .
>
> By using a network management system, the operator can obtain and evaluate system-wide diagnostic and status information, monitor network devices and their locations, observe network activity, and control access to the network system. [Col. 5, lines 51-55.]

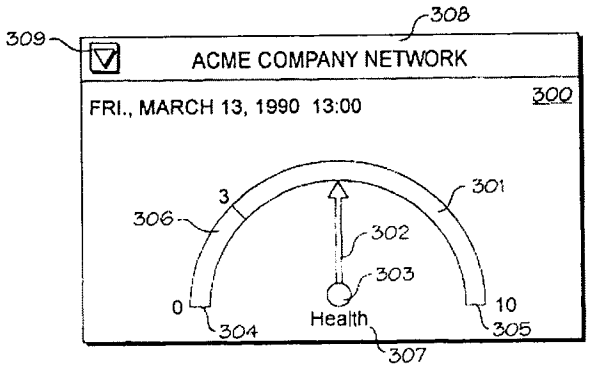

Fig. 3

. . .

The "health" of a network is an overall numerical representation of how well the network is functioning. [Col. 6, lines 18-19.]

. . .

The health information can be portrayed in the forms of a dial meter, graph meter, or digital meter. [Col. 8, lines 16-18; see also FIG. 3 included at right.]

. . .

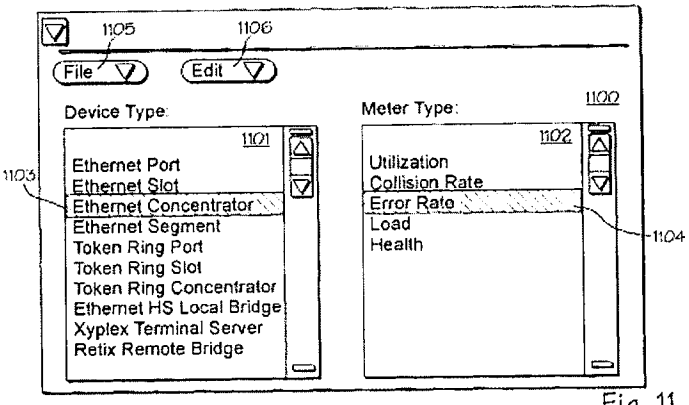

Fig. 11

FIG. 11 [included at right] illustrates a window 1100 which contains two scroll boxes 1101 an 1102. The device type scroll box 1101 contains a list of network devices. The meter type scroll box 1102 displays the meter types which have been defined for the selected device type. The user can select a particular device and meter type. The selected device 1103 and meter 1104 type will be highlighted. A file menu 1105 maintains a configuration file for each specific meter type. The configuration file contains information about the meter formula, MIB objects that are used in the formula, and settings for determining when the dial meter enters the green, yellow, or red areas. [Col. 12, lines 1-12.]

. . .

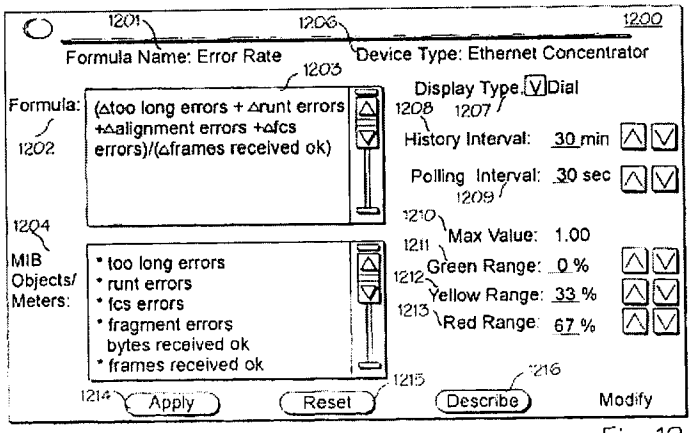

Fig. 12

FIG. 12 [included at right] illustrates a window used to modify the settings for a particular meter type. Formula name 1201 displays the selected meter type. Formula 1202 is comprised of a scroll box 1203 which contains the formula to be applied to the selected meter type 1201. MIB objects/meters 1204 is comprised of a scroll box 1205 which contains a list of MIB objects or meter types which are used in the meter formula 1202. An "*" indicates that the MIB object/meter type is currently being used in the formula. [Col. 12, lines 12-24.]

The Examiner interprets the formula of FIG. 12 in Manghirmalani as relative positioning of factors. As an initial matter, we disagree that the formula of Manghirmalani's FIG. 12 is a "data canvas" or that Manghirmalani's list of factors at 1204 is a "data palette" as recited in the claims. Although we disagree with the Examiner regarding this interpretation of Manghirmalani, to advance prosecution claim 42 is amended to recite "a data structure is created or modified

using . . . a weighting factor based on the graphical relative positioning of . . . said set of data parameters within the data canvas of the data picture." Manghirmalani fails to disclose or suggest claim 42 as amended. Relative positioning of variables in a function as described by the Examiner at pages 19 and 20 of the Office action of August 24, 2009, is not a weighing factor based on the graphical relative positioning of a selected set of one or more data parameters.

Tuli also fails to teach or suggest these elements such that Tuli and Manghirmalani, no matter how they are combined fail to teach every element of the claims. Tuli discloses a "workflow system and program for organizing the time and priorities of a user, wherein the information input by a user into a spreadsheet is generated by the program into a bar graph." Tuli at Abstract. Tuli also describes

> Using conventional drag and drop methods, a user may click a button on a mouse while the cursor is positioned over a bar, and drag the selected bar to a preferred location within the bar graph. Thus, a user is able to rearrange the bars according to personal preference, if the computer generated graph is not appropriate. [Col. 4, lines 62-67.]
>
> . . .
>
> To modify Task 3e 35e, a primary user may drag and drop with a mouse, the bar 36e of the bar graph 30e of FIG. 5b to the required location. Referring to FIG. 5d [included below], the bar 36e has been "dropped" in the second day 37b. Thus, the computer application automatically relocates Task 2c 35e to the final four hours of the second day 37b, as represented by the bar 36e of FIG. 5d. Similarly, Task 4c 35f is relocated to the third day 37e, as illustrated by the bar 36f of FIG. 5d. [Col. 8, lines 1-9.]

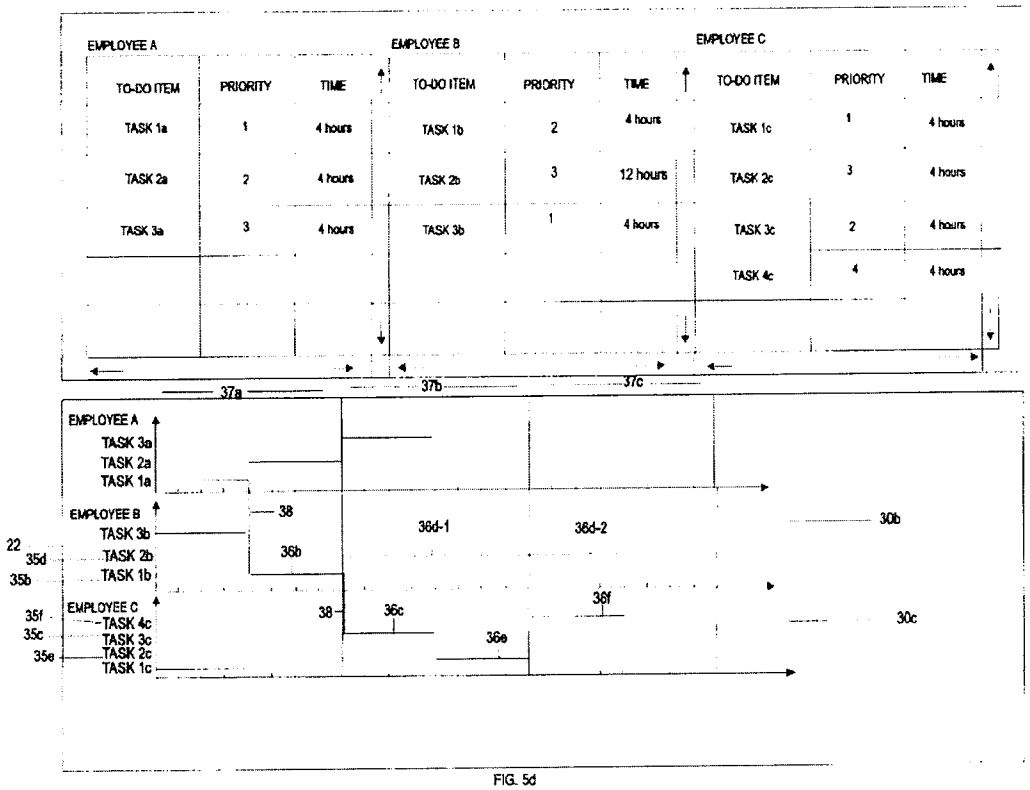

FIG. 5d

Tuli's system merely discloses the ability "to rearrange the bars according to personal preference" where the bars correspond to project endpoints. Tuli fails to provide the ability to select from "a set of data parameters available for selection" such that the selected set "can be displayed and relatively positioned arbitrarily" to create or modify a data structure as recited in claim 42. Manghirmalani discloses the ability to select various display parameters, but neither Manghirmalani nor Tuli disclose or suggest arranging selected parameters to create or modify a data structure using a weighting factor based on the graphical relative positioning of data parameters as recited in the claims.

Moreover, it would make no sense to modify Manghirmalani with Tuli as suggested because Manghirmalani's purpose is to display previously gathered information. This purpose is diametrically opposed to the teachings of Tuli, which relate to receiving inputs to modify the information. See MPEP 2143.01, Section V "The Proposed Modification Cannot Render The Prior Art Unsatisfactory For Its Intended Purpose." The rejections based on Manghirmalani and Tuli should be withdrawn on this basis alone.

For all these reasons, the rejections of the independent claims 42, 91, 99, 106, 111, 121, 126, 131, 136, and 141. The remaining claims ultimately depend upon one of the independent claims shown allowable above. While we believe that other arguments are available to highlight

the allowable subject matter presented in various ones of these dependent claims, we also believe that the comments set forth herein and in the appeal briefing of record regarding allowability of the independent claims are sufficiently compelling to warrant present exclusion of such additional points for the sake of brevity and expedited consideration.

Conclusion

For all of the reasons mentioned above, we respectfully request reconsideration and allowance of all pending claims. The Examiner is invited to contact the undersigned attorney to expedite prosecution.

The Commissioner is hereby authorized to charge any additional fees that may be required with respect to this communication, or credit any overpayment, to Deposit Account No. 06-1135.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

Date: November 20, 2009

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